



University of Hawaii at Manoa

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June 22, 1989
RR:0088

Mr. Owen Miyamoto
Airports Administrator
Airports Division
Department of Transportation
Honolulu International Airport
Honolulu, Hawaii 96819

Dear Mr. Miyamoto:

Hawaii Administrative Rules
Title 19, Subtitle 2, Chapter 34
Tour Aircraft Operations

The above referenced Chapter establishes new rules for tour aircraft operations within the State. This review was conducted with the assistance of George Curtis, Joint Institute for Marine and Atmospheric Research; Sheila Conant, General Science; and C. Anna Ulaszewski, Environmental Center.

General

In general, we feel that this draft of Chapter 34 fails to achieve standards of comprehensiveness desirable for Administrative Rules. Specific areas of deficiency noted by our reviewers are as follows.

Public Notification

Will the public be notified when a company has applied for a permit or renewal? Will public comments on the application be solicited?

Operations

According to the public hearing notice, Chapter 34 contains a section pertaining to operations; however, we do not find a section which specifically relates to either ground or in-flight operations.

We understand that the State has control over ground operations; however, there is some confusion regarding the State's jurisdiction regarding in-flight operations. In previous correspondence, reference number AIR-EP, 89.1294, the Department of Transportation has stated that "Any and all control of airspace is preempted from the State by the FAA." However, we find in HRS Chapter 263-4, Lawfulness of Flight, the following statement: "Flight in aircraft over the lands and water of the State is lawful, unless at such a low altitude as to

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interfere with the then existing use to which the land or water, is put by the owner; or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath."

Our reviewers have expressed concerns that low flights over environmentally sensitive areas, particularly forest and natural area reserves containing threatened or endangered species, may constitute interference with the intended refuge use of these habitats. Under such circumstances, the provisions of Chapter 263-4 would appear to be applicable.

The "above ground level" (AGL) over areas controlled by the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the National Park Service is 2000 feet. However, the AGL over sparsely populated areas is 500 ft.; this would apply to many of the environmentally sensitive areas in Hawaii that are not Federal lands. We understand that the State could petition the Regional Office of the FAA to regulate flight over designated areas.

Also, according to the proposed Administrative Rules, the Tour Aircraft Operators Permit application will include a copy of the "Fly Neighborly Program" for each route. Information regarding the location of known noise sensitive areas and noise abatement procedure to be employed will be provided. Is compliance with the "Fly Neighborly Program" mandatory? Has the "Fly Neighborly Program" received formal public review?

Revocation - Section 8

This section states that a permit may be revoked or a renewal refused after the permittee is notified and has the opportunity for a hearing. This section should specifically outline the procedures the director must take, including timing and method of notice.

Appeals

This Chapter should include a section entitled Appeals which would outline the procedures to be taken in case a permit or renewal is denied.

Thank you for the opportunity the comment on this draft of Chapter 34. We hope our comments are helpful in preparing the final draft.

Yours truly,



John Harrison
Environmental Coordinator

cc: L. Stephen Lau
George Curtis
Sheila Conant
C. Anna Ulaszewski